UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/C.12/1999/SR.6
4 May 1999

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twentieth session

SUMMARY RECORD OF THE 6th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 28 April 1999, at 3 p.m.

Chairperson: Mrs. BONOAN-DANDAN

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GE.99-41374 (E)

The meeting was called to order at 3.05 p.m.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (continued)

Discussion of a proposed study on the treaty bodies system

1. The CHAIRPERSON welcomed Ms. Anne Bayefsky, member of a team contracted to conduct a study on the treaty body system and invited her to elaborate on the mission statement she had made available to Committee members.

2. Ms. BAYEFSKY said that the proposed study on the United Nations human rights treaty system, launched in December 1998, provided an opportunity for presenting the High Commissioner for Human Rights with a report on the operation of the human rights treaty system at a critical juncture in its history. It was expected to be completed by December 1999 and would consist of two parts: the first was a country-impact study on a sample of 20 countries - four from each region - selected on the basis of geographical distribution. In an effort to determine the reasons for the success or failure of compliance with the treaties, it took the form of replies by national correspondents to a detailed questionnaire relating specifically to each country's attitude to the treaties, in terms of the drafting of reports, treatment of the various committees' concluding observations, the interest of the media and educators, the use made of the treaties in the work of the courts and of legislators, and access by non-governmental organizations (NGOs) to the process.

3. The second component was an operational analysis of the working methods and secretariat servicing of the treaty bodies, of general access to them, and of their relationships with the rest of the United Nations system, including other agencies and special rapporteurs. Contact had been made with all the major stakeholders, including ECOSOC-accredited organizations and other NGOs interested in following the work of the treaty bodies, national institutions, the human rights committees of parliamentary assemblies and all the United Nations agencies both in New York and Geneva, as well as States parties. By and large, the States parties had preferred to meet with the mission individually in order to express their concerns and proffer their future vision of the system. She hoped that Committee members would air their concerns and needs either from the floor or in writing.

4. The CHAIRPERSON said she welcomed the study, particularly since the Committee on Economic, Social and Cultural Rights appeared to be largely neglected in comparison with other human rights committees. She hoped that many of the mission's recommendations would touch on economic, social and cultural rights in general and on ways in which the system could serve to enhance the Committee. She opened the floor for members' comments, suggestions and questions on the study.

5. Mr. SADI, pointing out that such a study was long overdue, asked for information concerning the mission's mandate and budget support. Having twice served on the Commission on Human Rights, he was aware of the system's shortcomings and sceptical about the mission's hopes of obtaining reliable information from Governments and NGOs on such a critical issue by means of

questionnaires. He suggested that an alternative methodology should be sought; for instance, the mission could avail itself of the services of former members of treaty bodies, who, having been privy to what occurred within those bodies, would be more candid than Governments.

6. One shortcoming that should be rectified was the overlapping of the issues dealt with by the various treaty bodies. Another problem was that, owing to the dearth of resources - computer services, secretarial staff, officers to assist with the drafting of documents - the Committee was unable to make any headway with its enormous backlog of work. Also, sustained pressure needed to be exerted on countries if they were to be made to comply with the provisions of the Covenant. The fact that they were put to the test only every five years did not adequately serve that purpose: more frequent country reporting and additional Committee sessions were sorely needed. He was disappointed that the Committee had not yet felt the impact of Finland's financial contribution to the treaty bodies.

7. Ms. BAYEFSKY explained that the input from the field came not from Governments, but from questionnaires answered exclusively by independent national consultants - mainly academics - on the basis of interviews. Since the mission fulfilled its mandate in collaboration with the Office of the High Commissioner for Human Rights, the outcome would not be a mere academic study. It was largely funded by the Ford Foundation and was completely independent of the system and its funding sources. Its purpose was to listen to all constituencies and submit a series of recommendations on the treaty system to the Commissioner for Human Rights.

8. Mr. GRISSA said that while he understood that the main objective of the mission's task was to improve the work of the treaty bodies and the enforcement of human rights in the member States, the treaty bodies themselves possessed a wealth of information concerning their problems, which were repeatedly discussed at meetings, at least those of the Committee on Economic, Social and Cultural Rights. The way in which States parties treated the Committee's concluding observations varied from country to country. For example, the treaty bodies' work was rarely circulated in the developing countries, sometimes owing to lack of resources, sometimes because of restrictions on the press. He also wished to know how the mission's sample had been selected; for instance, had the sample from Africa, which had over 60 countries with differing characteristics, been chosen from West, East, North and Southern Africa?

9. Mr. CEAUSU pointed out that the Committee discussed its working methods, needs and preoccupations at virtually every session, as the summary records would undoubtedly show. While it was easy to be frank and candid in private meetings, public meetings were not the ideal forum for a critical view of the Committee's work and expectations. It would be more productive if the mission interviewed Committee members individually in order to obtain the broadest possible array of views.

10. Mr. ATANGANA asked for further details concerning the choice of national correspondents.

11. Mr. TEXIER said that the Committee on Economic, Social and Cultural Rights was quite different from other committees in that it had not been provided for in the Covenant, a fact that had both negative and positive aspects. Indeed, the much-vaunted indivisibility of the treaty bodies was a myth, since different treatment had been meted out to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights from the outset. It had been clear from the beginning that the Western countries were essentially interested in the Covenant on Civil and Political Rights, while the so-called socialist countries were content for economic, social and cultural rights to be on the agenda so long as that did not interfere with what actually occurred in the countries. Another negative aspect was the insecurity felt by the Committee, an offshoot of the Economic and Social Council (ECOSOC), in the fear that ECOSOC could, in a trice, undo what it had done, though the threat was not imminent in his view.

12. On the positive side, the Committee had created its own methods of work, which were relatively original - and had determined from its inception to give a voice to the NGOs - not only those accredited by ECOSOC - first informally and later in a more institutionalized manner, and they now took the floor on the first day of each session. Also, a working group of the Committee prepared and dispatched to States parties a list of issues for discussion six months in advance, thereby gradually paving the way for their appearance before the Committee. That measure had been extremely effective and could usefully be emulated by other committees, provided the committee concerned and the States parties both abided by the rules of the game.

13. With regard to substance, another problem was the lack of a clear definition of the content of economic, social and cultural rights. While in that regard fair progress had been made on forced expulsion and on the right to housing, the same needed to be done for all other rights, which made for an enormous backlog of work. The particular reticence felt by all States parties about the nature of economic, social and cultural rights had impeded adoption of the sorely needed optional protocol, which had been drafted as long ago as December 1996 and submitted to the Commission on Human Rights. The Commission had since met on three occasions, but as yet no working group on the subject had been established. While the consideration of reports on implementation was a fundamental component of the Committee's work, a vital complement to the Covenant was the individual and collective repercussions of those rights. However, progress had been made as far as methods of work for specifying those rights were concerned. With regard to the right to housing, dialogue had been strengthened with Panama, the Dominican Republic and Hong Kong, and practical measures proposed for its more effective enforcement.

14. One of the Committee's principal weaknesses was its lack of resources, it being clear that Commission officials devoted their time mainly to civil and political rights. Another was, as Mr. Grissa had mentioned, the scant publicity it received in the States parties, where economic, social and cultural rights were not taken very seriously. They could never be reliably enforced unless the Committee's work and debates were effectively publicized in the countries. For that the Committee was partly to blame.

15. It was incumbent on the Committee to ensure that its recommendations were implemented, but follow-up was not its forte, although it had improved somewhat in that respect. It might send country missions to monitor a State's performance. There was the case of a Colombian NGO which had seen one of the Committee's reports and tackled the Government on the subject of enforcement. Also, the Committee had obliged Canada, which had wished to defer its appearance before the Committee, to adhere to its original schedule and appear in order to discuss the problem of social budgets. By and large, the Committee had evolved empirically and succeeded in finding ways of discovering what went on in the States parties, but diversification of information sources was vital.

16. Lastly, he regretted that, with the exception of the International Labour Organization, which took the floor at each session of the Committee, the United Nations bodies did not display great interest in the Committee's deliberations, although they were enjoined in the Covenant to assist with its implementation.

17. Mr. ANTANOVICH wondered whether the black border around the presentation document presaged any pessimism regarding its prospects. There were of course good reasons for concern, since it was a very broad-ranging study of a type rarely conducted under the aegis of the United Nations, but he felt that it had come at the right time. He was pleased that Ms. Bayefsky had come to discuss the study with the Committee at the preliminary stage, and was sure all members would be willing to share their various views and approaches. Given the depth and scope of the study, it was obviously a pilot project which should be followed up later by efforts on promotion and implementation. Currently, promotion efficiency depended on implementation strategies since the whole system of the six major human rights treaties and their monitoring bodies was fundamental to the United Nations human rights programme. Nonetheless, on closer inspection, great disparities appeared in both promotion and awareness of human rights in the difference regions of the world. He was personally acquainted with countries where very few people had more than a very general idea of the existence of human rights.

18. He agreed with colleagues who queried the selection of national correspondents and wondered whether four was an adequate number for each region. There were countries in Asia with populations around the billion mark and serious problems of transparency in terms of economic, social and cultural rights, and such countries might merit separate treatment. The world was very varied, so it was important for recommendations on implementation to be presented on a regional basis. As a universal system, the human rights treaty bodies worked well, but analysis was needed of the way they functioned and existing discrepancies in order to improve implementation, including reporting by member States.

19. He held a positive view in general of Governments' efforts to comply with the demands of the treaty bodies, but the situation on the ground tended to overtake the submission of reports. Efforts to improve and speed up the process had to take cost into account, but perhaps the new telecommunication technology could offer better ways to report and, for the United Nations, to react and suggest new practices. The Committee had developed a commendable strategy for discussing major global issues with representatives of NGOs and

other United Nations specialized bodies. Globalization was a historic and not a natural process, meaning it could be influenced, but regional deviations should be considered. An outline was needed of issues that would contribute to human rights, particularly economic, social and cultural rights, and better approaches to the assessment of national strategies.

20. Publicity was important, but a real strategy was needed to publicize findings, for instance in book form, so that the new ideas on current human rights strategy, philosophy and practice could be more widely disseminated and accepted. The output of the communications media devoted to human rights reporting was very meagre. Reporting tended to focus on human rights violations, and although such concern was legitimate, it ousted serious public discussion on human rights as a way of life in civilized society and as a strategy for life in the future. In conclusion, he thought it was important for the Committee and the study team to get to know one another and share ideas, and he suggested meeting again at the autumn session, which would serve as a forum for the further development of human rights strategy.

21. Mrs. JIMENEZ BUTRAGUEÑO also thanked Ms. Bayefsky for the document. She had heard that one of the Committee's problems was follow-up, but both the countries themselves and members of the Committee were confused about the level and manner of follow-up. Members of other committees had commented that the final observations of the Committee on Economic, Social and Cultural Rights were exemplary. It might therefore be preferable to publish final observations rather than the annual reports, which might help with the issue of follow-up. Perhaps it was necessary to institute some kind of publicity drive, for instance through better attended press conferences at the end of meetings, if that was appropriate for an independent committee. Alternatively, the High Commissioner or the Secretariat, when disseminating information, could highlight the observations of the Committee. More emphasis might usefully be placed on the contributions of NGOs. Evidently there were improvements that could be made, but personally, she was very happy with the work and results of the Committee. Probably the greatest joy of her professional life had been when she and a colleague had succeeded in convincing the Chinese Government to reunite a child with his family. If the actions of individual members of the Committee could change the policy of major Governments, it evidently augured well for the work of the Committee as a whole.

22. Mr. KOUZNETSOV congratulated the High Commissioner on the new initiative. He wished the two rapporteurs every success, but warned them against the danger of wanting to re-invent the wheel, by which he meant that outside experts were no more likely to come up with new ideas than the committees themselves. All the committees, as far as they were able, carefully analysed their own working methods, and noted many points they would like to change. Countries, on the other hand, tended to react formally and he agreed with colleagues who doubted that new ideas could be expected from countries or their experts. As a long-term member of United Nations treaty bodies, he had been approached by a Russian expert to discuss innovations but, after several hours of talks, it became clear that the outside expert had no new ideas that the Committee had not already contemplated. It might indeed be the case that the Committee's ideas were falling on stony ground, because the States were not trained to look at the final observations, and sometimes the

committees themselves failed to look at changes in a country in the light of their previous comments and recommendations. There was the possibility that carrying out the study within the framework of the Office of the High Commissioner for Human Rights entailed certain limitations.

23. The indivisibility of rights was something all committee members were convinced of, but what did it mean in practical terms? The committees had different numbers of sessions, and were served differently by the secretariat. Serious research had already been done on the issue of duplication and he doubted whether any new observations could be made. Personally he felt it was not possible, and perhaps even unnecessary, to eliminate all duplication.

24. He thought there was a need to look at practice and see to what extent it complied with the covenants. For example, for reasons members were well aware of, the Committee was sometimes obliged to consider the situation of human rights in a country without reference to a country report. In formal legal terms that was not in accordance with the covenant, but should the practice be continued or altered? Perhaps the rapporteurs would be able to suggest other approaches.

25. If Mr. Antanovich's proposals for looking at the regionalization of the approach to human rights were taken up, perhaps that would lead to new ideas and new forms of working. The situation in Europe, for instance, was evidently different from that on other continents, so perhaps a regional approach would improve the system of monitoring. He had been very surprised to see in a press communiqué of the sixty-fifth session of the Human Rights Committee (March/April 1999), regarding Optional Protocol No. 1, ratified by the Russian Federation, that the secretariat had received communications from Russia, but had been unable to deal with them due to lack of Russian-speaking personnel. As someone who had recommended that the Russian Federation ratify the Optional Protocol, he had been disappointed to learn that those efforts had come up against technical problems of that nature.

26. He welcomed the opportunity to hear the preliminary ideas and interim results of the rapporteurs at the November session. The Committee was interested in the progress of that work and might be able to advise on the difficulties encountered. He wished the rapporteurs every success, but in view of the complexity of their task he felt it was too much for two people to tackle. Nevertheless, he was sure the report would be an important stage in the work of the treaty bodies, which was to increase respect for human rights.

27. Ms. BAYEFSKY explained that the rapporteurs had consulted the secretariat about the choice of national correspondents. One of the criteria used had been length of involvement in the treaty system, with presentation of State reports, summary records of dialogues and concluding observations, which gave the researchers a record and the opportunity to follow it up. In another context, they were concerned with variations in legal systems, cultures and languages. In choosing four countries from each region, they had tried hard to vary the target under consideration. Thus, in Africa they had chosen Egypt, Gambia, Senegal and South Africa; from Asia they had chosen Iran, Philippines, Japan and India - countries with large populations and significant differences. In addition to specific advice about those countries and how they handled the treaty system, they had also been concerned to find

countries that had signed as many as possible of the treaties, including the optional protocols, so that they could see how individual communications were dealt with. Such criteria added substance to their work.

28. Addressing the issue of pessimism, she pointed out that observers of the treaty system and those within the United Nations bureaucracy itself felt the system had reached a crossroads. There were many problems at various stages of the process: many reports were overdue; there was a heavy burden of reporting on States, and situations of overlap regarding both the substance of rights and the reporting process. The Committee on Economic, Social and Cultural Rights had played a leading role in promoting focused reporting and the formation of strategies to minimize duplication between committees and to maximize the effective use of time. Members were right in pointing out that some procedures could appropriately be applied to other committees, which was why the rapporteurs were planning to produce a detailed comparative analysis of the working methods of all the committees. There were considerable variations with respect, for instance, to the degree of secretariat involvement in the preparation of country reports, to the form of reports, to whether or not a list of issues was presented to the Government, and to whether or not the country reports, written answers and follow-up observations were available as United Nations documents.

29. Nevertheless, despite those differences there were recurring themes in terms of focus, one of which was the issue of follow-up. What happened to concluding observations? How could the media be used to publicize the work and conclusions of the committees? How could interest in the work of the committees, and hence in the treaties themselves, be maximized? She took pains to point out that the purpose of the study was the better implementation of the treaties themselves; it would be a mistake to view it simply as an examination of the working methods of the treaty bodies. It had to be understood, however, that responsibility for the implementation of the treaties lay not only with the treaty bodies, but also with the countries themselves, and with individuals and groups, who had a responsibility to make appropriate use of the treaties. That was why the study would be approaching the question of effective implementation from the point of view of all the actors in the process. It was not to be a description of current events, but would direct attention towards concrete recommendations. The full collaboration of the Office of the High Commissioner for Human Rights was an important factor, ensuring access to documentation and an understanding of what was working well across the system; that collaboration had already proved very helpful. She was personally optimistic about what could be accomplished in the time. It certainly was too great a task for two people, which was why they had 20 people in the field. They would be visiting the countries in question, and had arranged for full-time helpers in both South Africa and Canada.

30. Mr. HUNT, associating himself with the comments made by Mr. Texier, said that the previous chairperson of the Committee (Mr. Alston) had carried out a study for the Commission on Human Rights and had prepared three reports on treaty body reform. It was important to clarify the relationship between those studies and that being conducted by Professor Bayefsky. The progress made by the United Nations human rights treaty body system had been remarkable but at the same time deeply flawed. Such a system had previously been

inconceivable. Whatever changes had been introduced had developed in an ad hoc manner and, in that regard, a warning should be issued. Reforms should be used to strengthen the treaty body system. There was, however, a risk that the reform process would be exploited by some to weaken it. As regards the election of experts to the Committee, that process ensured proper geographical distribution among members, since it was framed by an Economic and Social Council resolution.

31. Mr. SADI said that attention should be directed to the status of the Covenant in different countries. Once the Covenant had been accepted as legally binding, the first steps could be taken towards a more effective treaty body system. Secondly, the reporting system and optional protocol procedure were defective. That was so because the Committee relied on incomplete information. The Human Rights Committee had also been forced to make use of limited sources of information in relation to ambiguous cases. Work was done under pressure and judgements made in an excessively rapid manner. Finally, the status of the Committee's concluding observations should be made clear since otherwise States parties did not know how to react to them. A recommendation should also be made regarding the establishment of a human rights court.

32. Mr. MARCHAN ROMERO emphasized that it was important to have an academic study which was independent of the human rights monitoring system. Such a study would have two important advantages. Firstly, it would contain case law on how human rights were implemented in various countries, thereby providing a general overview of the human rights climate. Secondly, it was important for the study to evaluate in academic terms the extent to which human rights were implemented.

33. Ms. BAYEFSKY said that the studies conducted by Mr. Alston formed an important basis for the work she was undertaking. They were complemented by the material examined at the World Conference on Human Rights held in Vienna. The views presented by the Committee were extremely important and would be taken into account during the preparation of her study.

Action on Economic and Social Council decisions

34. The CHAIRPERSON said that the Economic and Social Council had requested the Committee to update its previous draft decisions on the holding of its nineteenth session in New York and of an extraordinary additional session. The two previous recommendations could be combined in order to request an extraordinary additional session in New York. That could be transformed into a request for a regular third session on an annual basis.

35. Mr. GRISSA said that if a third session were requested, it could be reserved for the consideration of country reports, without reference to a possible venue.

36. Mr. WIMER ZAMBRANO said that the secretariat could provide the necessary background information on the matter.

37. The CHAIRPERSON emphasized that the previous draft decisions already contained the reasons for the request for a third annual session to be held in New York. The decisions referred to the Committee's need to make its activities and concerns accessible to a wider range of participants. There

was a very different potential constituency which might follow its work in New York, including government delegations, non-governmental organizations, the media and international agencies. It should also be noted that one of every three sessions of the Human Rights Committee was held in New York and that had contributed very significantly to improving the profile and prominence of the work of that Committee.

38. Mr. AHMED, endorsing the comments made by the Chairperson, said that a commitment had already been made in the request for a third session to be held in New York.

39. Mr. ANTANOVICH said that it was clear that the Committee required better operational capacities. The expenditure incurred in holding a third session in New York would not be much greater than if the session were held in Geneva. It was, moreover, important for the High Commissioner for Human Rights to lobby the relevant United Nations departments so that the Committee's request would be granted.

40. The CHAIRPERSON pointed out that the Economic and Social Council's request for an updated decision from the Committee indicated its interest in the proposals contained therein.

41. Mr. HUNT emphasized that the request for a third annual session had substantial financial implications. Was such a request realistic?

42. Mr. TEXIER shared the concern expressed by Mr. Hunt. A precedent had already been established with regard to holding a second regular session and, consequently, it was possible that the Economic and Social Council would reject the request for a third regular session on financial and other grounds.

43. Mr. ANTANOVICH said that it was important to adopt a nuanced approach. The Chairperson should make the necessary consultations in the secretariat since a request for an extraordinary third session might initially be accepted but a further request for such a session could be rejected as a result of the precarious financial situation prevailing in the United Nations.

44. The CHAIRPERSON, concluding the discussion, said that Mr. Hunt would prepare a new draft decision requesting an extraordinary third session in New York. Such a draft decision would help to identify the possible problems and advantages involved.

45. Mr. AHMED stressed that the draft decision should refer to the backlog of reports for consideration accumulated by the Committee, thereby substantiating the need for an extraordinary third session.

46. Mr. SADI said that given the current interest in economic, social and cultural rights, the draft decision should contain a further preambular paragraph giving that interest more concrete form.

47. The CHAIRPERSON concluded by agreeing that the Committee should take advantage of the rising tide of interest in its work.

The meeting rose at 4.55 p.m.